

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY

STELLA BAKIRTZIS

Plaintiff,

vs.

DITECH FINANCIAL LLC;  
SHELLPOINT MORTGAGE  
SERVICING, A DIVISION OF  
NEW PENN FINANCIAL, LLC;  
JOHN DOES I-X,

Civil Action No.

**COMPLAINT AND JURY DEMAND**

Stella Bakirtzis, of full age, hereby Complains of  
Defendants as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction is appropriately laid in the United States District Court, District of New Jersey pursuant to 28 USC §1331 as the claim in question is based upon a federal statute and Federal Question Jurisdiction.

2. Venue is appropriately laid in the District Court of New Jersey pursuant to 28 U.S.C. §1391(b)(2) as the events giving rise to the claim occurred substantially within the State of New Jersey.

**PARTIES**

3. Stella Bakirtis, owns and resides in the real property located at 36 Lincoln Street, Borough of Roseland, New Jersey.

4. Ditech Financial LLC ("Ditech") serviced the mortgage loan that is the subject of this litigation. Ditech maintains its

principal place of business in Minnesota. For the purposes of service of process Ditech maintains an agent in New Jersey at The Corporation Trust Company 820 Bear Tavern Road, West Trenton, New Jersey.

5. Shellpoint Mortgage Servicing, a division of New Penn Financial, LLC ("Shellpoint") is the current mortgage loan servicer for Plaintiff's loan. Shellpoint's main business address is in Pennsylvania. For the purposes of service of process Shellpoint maintains an agent in New Jersey at Corporation Service Company 830 Bear Tavern Road, West Trenton, New Jersey.

**COUNT I**

**VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT**

**12 U.S.C. §2601 *et seq.***

6. Plaintiff owns and resides in the real property that is the subject of this litigation.

7. In May 2005 Plaintiff executed a promissory note in the amount of \$359,650.00 payable to the order of Superior Mortgage Corp. At the same time, Plaintiff executed a mortgage as security for the loan.

8. The mortgage loan is covered by the Real Estate Settlement Procedures Act ("RESPA")

9. After the mortgage loan closed it was sold multiple times.

a. On June 28, 2016 the mortgage loan was sold to MTGLQ

Investors LP.

**10.** Due to unforeseen economic circumstances Plaintiff defaulted on the mortgage loan in late 2006.

**11.** Plaintiff has since maintained long term financial stability and gainful employment. Plaintiff has never had sufficient money to reinstate the loan.

**12.** On November 27, 2012 loan servicing company Everbank filed a new foreclosure debt collection action under New Jersey Superior Court docket F-27960-12.

a. On February 18, 2016 judgment was entered in the foreclosure debt collection action. The judgment amount is \$593,587.34.

b. A sheriff sale presently scheduled for September 13, 2016.

**13.** On May 1, 2014 servicing of the loan was transferred to Green Tree Servicing, LLC which subsequently changed its name to Ditech Financial LLC.

**14.** Ditech is a loan servicing company covered by the RESPA.

**15.** On June 16, 2016 Ditech received Plaintiff's complete loss mitigation application to Ditech. A copy of the letter conveying the application to Ditech and its foreclosure counsel is attached hereto as **Exhibit 1**.

**16.** At no time since June 16, 2016 has Ditech requested additional loss mitigation documentation from Plaintiff.

17. Pursuant to 12 C.F.R. §1024.41 Ditech was required to evaluate Plaintiff's loss mitigation application within thirty days.

18. Pursuant to 12 C.F.R. §1024.41(c), Ditech was obligated to:

- (i) Evaluate the borrower for all loss mitigation options available to the borrower; and
- (ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

19. By letter dated August 3, 2016 Ditech sent a letter to Plaintiff confirming that the loss mitigation application is complete. A copy of the letter is attached hereto as **Exhibit 2**.

- a. August 3 was 48 days after Ditech received Plaintiff's complete loss mitigation application.

20. Ditech failed to evaluate Plaintiff for all loss mitigation options available in the time period required by 12 C.F.R. §1024.41.

21. Ditech has failed to provide Plaintiff with a notice in writing of its determination of which loss mitigation options, if any are available to Plaintiff.

22. RESPA required Ditech to complete its evaluation of Plaintiff's loss mitigation application on or before July 16, 2016.

23. Ditech failed to adjourn the sheriff sale on Plaintiff's home despite having a complete loss mitigation application more than 37 days before the scheduled sale date.

24. Plaintiff paid \$28.00 to file one of two statutory adjournments of the sheriff sale. In connection with the adjournment Plaintiff also incurred expenses to pay a courier to hand deliver the adjournment papers to the sheriff.

25. On August 15, 2016 servicing of Plaintiff's mortgage loan transferred from Ditech to Shellpoint. A copy of the notice of servicing transfer is attached hereto as **Exhibit 3**.

26. As successor in interest, Shellpoint stands in the shoes of Ditech.

27. Shellpoint knew it was acquiring servicing of a loan undergoing loss mitigation review.

28. Shellpoint has failed to review Plaintiff's complete loss mitigation application within 30 days of submission as required by RESPA.

29. Had Defendants completed their review of the loss mitigation application as required by RESPA, Plaintiff would not have incurred expenses associated with the sheriff sale adjournment.

30. On information and belief, Defendants have continued to charge Plaintiff interest, late fees and other charges that would not be incurred had a timely review of the loss mitigation application been conducted. The interest, late fees and other charges constitute damages.

31. As a result of Defendants' failure to properly review Plaintiff's loss mitigation application as required by RESPA, Plaintiff has suffered damages.

32. Plaintiff is entitled to relief as set forth in 12 U.S.C. §2605 including actual damages, attorney fees, costs of suit and all other relief the Court finds suitable.

**WHEREFORE,** PLAINTIFF demands:

- a. Compensatory Damages
- b. Punitive Damages
- c. Statutory Damages
- d. Restitution
- e. Injunctive Relief
- f. Attorney fees and costs
- g. All other relief this Court determines to be just and fair.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury and will not be satisfied with fewer than six jury members.

DENBEAUX & DENBEAUX  
ATTORNEYS FOR PLAINTIFF

August 18, 2016

/S/ Adam Deutsch  
Adam Deutsch, Esq.  
DENBEAUX & DENBEAUX

# Exhibit 1



366 KINDERKAMACK ROAD  
WESTWOOD, NEW JERSEY 07675  
201.664.8855  
FAX: 201.666.8589  
www.denbeauxlaw.com



Marcia W. Denbeaux  
Joshua W. Denbeaux  
Adam Deutsch\*  
Nicholas A. Stratton\*  
Richard Jared Stepp  
Nima Ashtyani\*\*  
Of Counsel  
Abigail D. Kahl  
Mark P. Denbeaux\*

\*Admitted in NJ and NY  
\*\*Admitted in NJ, NY, and CA

June 16, 2016

**Sent via Facsimile (866) 870-9919**

Ditech Financial, LLC  
Loss Mitigation Department  
P.O. Box 6172  
Rapid City, SD 57709-6172

**Re: Everbank v. Stella Bakirtzis, et al.  
Docket No.: F-027960-12**

**Account #: 82436973-0  
Property: 36 Lincoln Street, Roseland, NJ 07068**

Dear Sir or Madam,

This firm represents Stella Bakirtzis with regard to the above referenced matter and property.

Please find enclosed Ms. Bakirtzis' modification application along with supporting documentation. Kindly review and advise as to our next steps.

Thank you for your attention to this matter.

Very truly yours,

DENBEAUX & DENBEAUX

A handwritten signature in black ink, appearing to read "R. Stepp", written over a horizontal line.

R. Jared Stepp

RJS:jc

cc: Sanford J. Becker, Esq. *via NJLS*  
Stella Bakirtzis

Enclosures

Jason Cecere, Paralegal  
Denbeaux & Denbeaux  
366 Kinderkamack Road  
Westwood, New Jersey 07675  
201-664-8855  
FAX: 201-666-8589  
email: jcecere@denbeauxlaw.com

# Fax

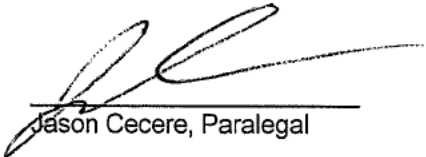
<b>To:</b>	Ditech Financial LLC	<b>From:</b>	Denbeaux & Denbeaux
<b>Fax:</b>	(866) 870-9919	<b>Pages:</b>	14 Pages (Including this Page)
<b>Phone:</b>		<b>Date:</b>	6/16/16
	Stella Bakirtzis Account #: [REDACTED]		
<b>Re:</b>	Property: 36 Lincoln Street Roseland, NJ 07068	<b>Attn:</b>	Loss Mitigation Department

☒ **Urgent**    ☒ **For Review**    ☐ **Please Comment**    ☒ **Please Reply**    ☐ **Please Recycle**

● **Comments:** Enclosed please find Defendant's modification application and supporting documentation. Kindly review and advise as to our next steps.

Thank you.

DENBEAUX & DENBEAUX

  
\_\_\_\_\_  
Jason Cecere, Paralegal

cc: Sanford J. Becker, Esq. *via NJLS*  
Stella Bakirtzis

Enclosures

# Send Result Report

Case 2:16-cv-05154-JLL-LAD Document 1 Filed 08/24/16 Page 11 of 19 PageID #: 11



MFP

TASKalfa 5501i

Firmware Version 2N9\_2000.004.040 2014.10.28

06/16/2016 11:21  
[2N7\_1000.003.006] [2N4\_1100.001.002] [2N4\_7000.004.033]

Job No.: 098536

Total Time: 0'07'43"

Page: 014

## Complete

Document:

doc09853620160616111234

Jason Cecere, Paralegal  
Denbeaux & Denbeaux  
366 Kinderkamack Road  
Westwood, New Jersey 07675  
201-894-8855  
FAX: 201-696-8589  
email: jcecere@denbeauxlaw.com

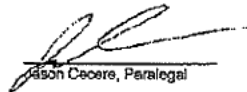
## Fax

To:	Ditech Financial LLC	From:	Denbeaux & Denbeaux
Fax:	(866) 870-9919	Pages:	14 Pages (including this Page)
Phones:		Date:	6/16/16
Re:	Stella Bakirtzis Account #: [REDACTED] Property: 36 Lincoln Street Roseland, NJ 07068	Attn:	Loss Mitigation Department
<input checked="" type="checkbox"/> Urgent <input checked="" type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input checked="" type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle			

\* Comments: Enclosed please find Defendant's modification application and supporting documentation. Kindly review and advise us to our next steps.

Thank you.

DENBEAUX & DENBEAUX

  
Jason Cecere, Paralegal

cc: Sanford J. Becker, Esq. via MLS  
Stella Bakirtzis

Enclosures

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
001	06/16/16 11:13	8668709919	0'07'43"	FAX	OK	200x100 Normal/Off

**NJLS Couriers**TEL: (908) 686-7300 FAX: (908) 686-5300  
www.NJLS.comAccount No: **1679A-04**  
DENBEAUX & DENBEAUX  
Denbeaux & Denbeaux  
366 KINDERKAMACK ROAD  
WESTWOOD, NJ 07675-1675TRACKING # 20413168  
Ship Date: 6/17/2016 9:23 AM

\* 2 0 4 1 3 1 6 8 \*

SIGNATURE REQUIRED

BILLING REFERENCE  
Reference No: Bakirtzis**RECIPIENT**PLUESE, BECKER & SALTZMAN, LLC  
Sanford J. Becker, Esq.  
20000 Horizon Way  
Suite 900  
Mount Laurel, NJ 08054-4303

22

CUT HERE

AFFIX THIS PART TO YOUR SHIPMENT  
CUT HERE

CUT HERE

## SHIPMENT RECEIPT FOR YOUR RECORDS

INFORMATION YOU REQUESTED HAS BEEN TRANSMITTED TO NJLS.  
NO FURTHER ACTION IS REQUIRED ON YOUR PART**NJLS Couriers**

NEW PROVIDENCE UNION CHERRY HILL

TEL: (908) 686-7300 FAX: (908) 686-5300

www.njls.com

SIGNATURE REQUIRED

Account No: **1679A**

TRACKING # 20413168

FROMDENBEAUX & DENBEAUX  
Denbeaux & Denbeaux  
366 KINDERKAMACK ROAD  
WESTWOOD, NJ 07675-1675BILLING REFERENCEReference No: Bakirtzis  
Docket No: 027960-12SHIP TOSanford J. Becker, Esq.  
PLUESE, BECKER & SALTZMAN, LLC  
20000 Horizon Way  
Suite 900  
Mount Laurel, NJ 08054-4303ITEM DESCRIPTION

Other

# Exhibit 2



RECEIVED  
AUG 15 2016

BY: .....

Ditech Financial LLC  
P.O. Box 6172  
Rapid City, SD 57709-6172  
Phone: 1-800-643-0202  
[www.ditech.com](http://www.ditech.com)

August 3, 2016

STELLA BAKIRTZIS  
JOSHUA W DENBEAUX  
366 KINDERKAMACK RD  
WESTWOOD, NJ 07675

Re: Ditech Financial LLC, ("Ditech")  
Account Number: [REDACTED]  
Property Address: 36 LINCOLN ST  
BOROUGH OF ROSELAND, NJ 07068

Dear STELLA BAKIRTZIS:

Ditech recently received your application for a loss mitigation option for your above-referenced account. At this time Ditech has determined that your application is complete and we are now evaluating your account for modification options.

The evaluation process takes approximately 30 days. When we have completed our review, you will receive one of these three responses:

- Your account has been approved for a loss mitigation retention option. A letter will be sent to provide you with details and instructions on how to proceed.
- Your account is not eligible for this program, but may be eligible for other foreclosure prevention alternatives. This notification will come in the form of a letter describing other options such as a different modification program, short sale or deed-in-lieu of foreclosure.
- We need more information from you to make our decision. We will either call you or send you a letter with this request.

If your account was previously referred to foreclosure, we will continue the foreclosure process while we evaluate your account for a foreclosure prevention alternative, if allowed by state law. However, as long as a complete application was received more than 37 days prior to foreclosure sale, no foreclosure sale will be conducted and you will not lose your home if Ditech is reviewing a completed borrower response package or has extended an offer and the time frame for acceptance has not expired.



If the complete application was received less than 38 days prior to a scheduled foreclosure sale, we will evaluate the account for a foreclosure prevention alternative and suspend the foreclosure sale, if appropriate.

Ditech will not be in violation if the foreclosure sale is not suspended when:

- A court (if any), or a bankruptcy court in a bankruptcy case, or a public official charged with carrying out the foreclosure, fails or refuses to halt some or all activities in the matter, after Ditech has made reasonable efforts, to move the court or request the public official to stop the foreclosure.
- Action is taken to protect the interests of the owner, investor or guarantor of the account in response to action taken by you or other parties in the foreclosure process.
- There is not sufficient time following your acceptance of the trial period plan to halt the foreclosure.

Please be advised that any loss mitigation option that Ditech is able to provide on this account will not be applicable to any other mortgage accounts or liens that you may have on this property. Please contact the servicer(s) of any other mortgage account or lien that is secured by this property in order to discuss loss mitigation options that may be available for you.

For all first lien mortgage accounts: You have the right to receive a copy of all written appraisals or valuations developed in connection with a modification application.

If you wish to discuss your account or have any other questions, please contact your account representative.

Your assigned account representative is KACEEX B at 1-800-643-0202, extension 33325; Ditech has designated the following address where mortgage loan customers must send any Qualified Written Request, Notice of Error or Request for Information: PO Box 6176, Rapid City, SD 57709-6176.

Sincerely,

Ditech  
1-800-643-0202  
Monday - Friday 7 a.m. to 8 p.m., Saturday 7 a.m. to 1 p.m. CST

This communication is from a debt collector. It is an attempt to collect a debt, and any information obtained will be used for that purpose.



539384 - 40

DITECH FINANCIAL LLC  
P.O. BOX 6172  
RAPID CITY SD 57709

US POSTAGE AND FEES PAID

**FIRST-CLASS**  
Aug 03 2016  
Mailed from ZIP 56303  
1 oz First-Class Mail Letter



071V00922396



STELLA BAKIRTZIS  
JOSHUA W DENBEAUX  
366 KINDERKAMACK RD  
WESTWOOD NJ 07675

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Envelope: USPS\_6x9\_FULL\_WINDOW  
Total Pages: 3





# Exhibit 3



PO Box 6172  
Rapid City, SD 57709-6172

Tel 1-800-643-0202  
Fax 1-866-870-9919  
www.ditech.com

RECEIVED  
AUG - 1 2016

+ 0657651 000000773 09GTR4 0061287 KK

STELLA BAKIRTZIS  
JOSHUA W DENBEAUX  
366 KINDERKAMACK RD  
WESTWOOD NJ 07675-1675

BY: .....

July 29, 2016



Ditech Financial LLC ("Ditech")  
Account Number: [REDACTED]

Dear Valued Customer:

### NOTICE OF SERVICING TRANSFER

The servicing of your mortgage loan is being transferred, effective August 15, 2016. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

Ditech is now collecting your payments. Ditech will stop accepting payments received from you after August 14, 2016.

Shellpoint Mortgage Servicing, a division of New Penn Financial, LLC ("Shellpoint Mortgage Servicing") will collect your payments going forward. Your new servicer will start accepting payments received from you on August 15, 2016.

**Send all payments due on or after August 15, 2016 to Shellpoint Mortgage Servicing at this address:**

Shellpoint Mortgage Servicing  
PO Box 740039  
Cincinnati, OH 45274-0039

If you have any questions for either your present servicer, Ditech, or your new servicer, Shellpoint Mortgage Servicing, about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:  
Ditech  
Customer Service  
1-800-643-0202  
PO Box 6172  
Rapid City, SD 57709-6172

New Servicer:  
Shellpoint Mortgage Servicing  
Customer Service  
1-800-365-7107  
P.O. Box 10826  
Greenville, SC 29603-0826

Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way:

Please be advised that any optional insurance (i.e., mortgage life, disability insurance, etc.) that you may have on the loan being transferred is billed directly by the insurance carrier and this transfer of servicing will not affect your insurance coverage.

You should do the following to maintain coverage:

No action is required on your part.

Ditech has designated the following address where mortgage loan customers must send any Qualified Written Request, Notice of Error or Request for Information: PO Box 6176, Rapid City, SD 57709-6176

Ditech  
Present Servicer

July 29, 2016  
Date

**This communication is from a debt collector. It is an attempt to collect a debt, and any information obtained will be used for that purpose.**